

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO: 3:09-CV-65-MR-DCK**

FRANKLIN LEDFORD,)	
)	
Plaintiff,)	MEMORANDUM AND
)	RECOMMENDATION
v.)	
)	
)	
D.R. HORTON, INC., and D.R. HORTON,)	
INC. – CHARLOTTE DIVISION,)	
)	
Defendants.)	
)	
and)	
)	
D.R. HORTON, INC.,)	
Third-Party Plaintiff,)	
)	
v.)	
)	
CAROLINA FRAMERS, INC.,)	
)	
Third-Party Defendant.)	

THIS MATTER IS BEFORE THE COURT on the “Defendant D. R. Horton, Inc.’s Motion to Dismiss” (Document No. 3) filed on February 24, 2009. The motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and immediate review is appropriate. Having fully considered the record, the undersigned recommends that the above motion to dismiss be **denied as moot without prejudice**, based upon the following proposed findings of fact and conclusions of law:

I. Findings of Fact

Plaintiff filed his state complaint in Mecklenburg County Superior Court, Case Number 09-cvs-814, on January 12, 2009. (Document No. 1-4, “Complaint”). Defendant D. R. Horton, Inc. thereafter removed this case to federal court. (Document No. 1, “Notice of Removal”). Defendant D. R. Horton, Inc. answered the complaint and filed a motion to dismiss. (Document Nos. 2, 3). Plaintiff thereafter filed an amended complaint on February 26, 2009. (Document No. 11). On March 23, 2009, Defendant D. R. Horton, Inc. filed a revised motion to dismiss pertaining to the newly Amended Complaint. (Document No. 17).

II. Conclusions of Law

It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. *Accord Young v. City of Mount Ranier*, 238 F. 3d 567, 573 (4th Cir. 2001) (“[t]he general ruleis that an amended pleading supersedes the original pleading, rendering the original pleading of no effect); *Colin v. Marconi Commerce Systems Employees' Retirement Plan*, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (defendants’ earlier motion to dismiss was rendered moot by the filing of plaintiff’s second amended complaint); *Turner v. Kight*, 192 F. Supp. 2d 391, 397 (D. Md. 2002) (denying as moot motion to dismiss original complaint on grounds that amended complaint superseded original complaint).

“A pleading that has been amended ... supersedes the pleading it modifies Once an amended pleading is interposed, the original pleading no longer performs any function in the case and any subsequent motion made by an opposing party should be directed at the amended pleading.” 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1476 (2d ed. 1990); *and see, e.g., Brown v. Sikora and Associates, Inc.*, 2008 WL 1751934, *3 (4th Cir.

(S.C.)); *Atlantic Skanska, Inc.*, 2007 WL 3224985, *4 (W.D.N.C.); *Hi-Tech, Inc. v. Rising*, 2006 WL 1966663, *3 (W.D.N.C. July 11, 2006).

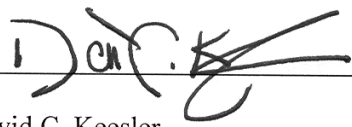
In the present case, the Plaintiff has filed an Amended Complaint which supersedes the initial Complaint. The Defendants have already filed a subsequent motion to dismiss in response to the amended complaint.

IT IS, THEREFORE, RECOMMENDED that the “Defendant D. R. Horton, Inc.’s Motion to Dismiss” (Document No. 3) should be **DENIED as moot without prejudice**.

III. Notice of Appeal Rights

The parties are hereby advised that, pursuant to 28 U.S.C. § 636(b)(1)(c), written objections to the proposed findings of fact and conclusions law and the recommendations contained in this memorandum must be filed within ten (10) days after service of same. *Snyder v. Ridenour*, 889 F.2d 1363, 1365 (4th Cir.1989); *United States v. Rice*, 741 F.Supp. 101, 102 (W.D.N.C.1990). Failure to file objections to this memorandum with the District Court constitutes a waiver of the right to *de novo* review by the District Court, *Snyder*, 889 F.2d at 1365, and may preclude the parties from raising such objections on appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir.1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir.1984).

Signed: May 6, 2009



David C. Keesler
United States Magistrate Judge

